IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL WRIT PETITION NO.210 OF 2006

Rekha Rajendra Padhye & anr. : Petitioners.

versus

The State of Maharashtra & ors. : Respondents.

Mr.Shirish Gupte, Sr.Counsel with Mr.H.S.Venegaonkar for the petitioners.
Mr.V.B.Konde-Deshmukh, APP, for the State.
Mr.V.V.Purvant for Respondent No.8

CORAM : D.G.DESHPANDE
S.A.BOBDE, JJ.
DATED : JULY 07, 2006.

P.C.

1. Rule, returnable forthwith. By consent of both the parties, the petition is taken up for final hearing. Heard Mr.Gupte, Sr.Counsel, appearing for the petitioner and learned APP Mr.V.B.Konde-Deshmukh for the State. The

petitioner is a builder. She purchased rights of Pole Star Co-operative Housing Society for development of the building known as Gayatri. Almost all the members have given their consent and power of attorney to the builder. One member Mr.Ravindra Gupta also followed the suit. But immediately on the next day he sold the flat to one Satra without disclosing to the purchaser that he had already given consent to the builder for development and also about the execution of power of attorney. In this background Mr.Gupta lodged a complaint against the petitioner to the police upon which offences under Sections 455, 456, 458 r/w 34 of the Indian Penal Code are registered vide C.R.No.7 of 2006 at Navghar Police Station, Mulund (E) Mumbai.

2. In the aforesaid circumstances, the petitioner has no role to play in any transaction with the purchaser. The purchaser, if at all he has been cheated, may have claim against the said Gupta. Learned APP Mr.Konde-Deshmukh, upon instructions from the Investigating Officer PSI Halde, who is present in Court, says and produces the report submitted by the concerned officer wherein it is revealed during investigation that

complainant Gupta informed the petitioner-builder on phone that Gupta has vacated his block No.7 and the petitioner-builder can take the said flat in his possession and, accordingly on 9th January 2006 the petitioner-builder put his lock. Apart from this, nothing could be pointed out from the record and the records available with the IO from which it could be said that the petitioner-builder has any role in the aforesaid offences. Even the learned APP could not point out any thing from the record as to how this petitioner could be implicated in the said C.R. No.7 of 2006 registered for the aforesaid offences. Therefore, in this view of the matter, the petition is allowed. Rule is made absolute in terms of prayer clause (b). Copy of the reports submitted by the learned APP are taken on record.

[D.G.DESHPANDE,J]

[S.A.BOBDE, J]